

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

TREVOR SPIVEY

PLAINTIFF

VS.

CIVIL ACTION NO. 4:22cv107-DMB-DAS

**YOUNG’S ENTERPRISE 1, LLC; RICKEY
LANE YOUNG; AND JOHN DOES 1-5**

DEFENDANTS

NOTICE OF REMOVAL

NOTICE IS HEREBY GIVEN that Defendants, Young’s Enterprise 1, LLC (“Young’s Enterprise”), and Rickey Lane Young (“Young”) (collectively “Defendants”), through counsel, have removed Civil Action No. 22-49 filed in the Circuit Court of Bolivar County, Mississippi, Second Judicial District, to the United States District Court for the Northern District of Mississippi, Greenville Division. This Notice of Removal is filed pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. Removal is proper because there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

I. Civil Action Removed

1. On May 23, 2022, Plaintiff, Trevor Spivey (“Plaintiff”), filed a Complaint in state court against Defendants as a result of a motor-vehicle accident that occurred on or about February 16 or 17, 2022, in Cleveland, Bolivar County, Mississippi. This state-court action is styled, *Trevor Spivey vs. Young’s Enterprise 1, LLC; Rickey Lane Young; and John Does 1-5*, and is filed in the Circuit Court of Bolivar County, Mississippi, Second Judicial District, bearing Civil Action No. 22-49. Pursuant to 28 U.S.C. § 1446(a) and L.U. Civ. R. 5(b), a true and correct copy of the certified record of state-court proceedings is attached hereto as **Exhibit A**.

II. Timeliness of Removal

2. Plaintiff served both Defendants with the Summons and Complaint on June 18, 2022. Because this Notice of Removal is being filed within thirty (30) days after Defendants' receipt of the initial pleading setting forth the claim for relief upon which this action is based, removal is timely. *See* 28 U.S.C. § 1446(b)(1).

III. Complete Diversity of Parties

3. According to the Complaint, Plaintiff is a citizen of Mississippi. Compl. (Ex. A) ¶ 1. Young's Enterprise 1, LLC, is a Tennessee single-member limited liability company. Its sole member is Defendant, Rickey Lane Young, a citizen of Tennessee. Therefore, in accordance with 28 U.S.C. § 1332, both Defendants are not citizens of Mississippi, and there is complete diversity of citizenship in this case.

IV. Amount in Controversy Exceeds \$75,000

4. In the Fifth Circuit, "the district court must first examine the complaint to determine whether it is 'facially apparent' that the claims exceed the jurisdictional amount." *St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998) (citing *Allen v. R&H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995)). If it is not apparent from the complaint, "the court may rely on 'summary judgment-type' evidence to ascertain the amount in controversy." *Id.* (citing *Allen*, 63 F.3d at 1336)).

5. Defendants' counsel sent Plaintiff's counsel a release for Plaintiff to sign whereby Plaintiff would release Defendants of all claims in excess of \$75,000, exclusive of interest and costs. In return, Defendants would agree to keep the case in state court. A copy of this release is attached hereto as **Exhibit B**.

6. Plaintiff's counsel informed Defendants' counsel that Plaintiff would not be signing the release, as the value of his claims exceeded \$75,000. A copy of the emails between counsel for both parties is attached hereto as **Exhibit C**.

7. Courts in the Northern District "have held that a plaintiff's refusal to admit or stipulate that he will not accept more than \$75,000 in damages is sufficient proof that the jurisdictional amount exceeds \$75,000." *Willmer v. Saverite Grocery Warehouse, Inc.*, No. 4:04CV325-P-B, 2006 U.S. Dist. LEXIS 50548, at *3-4 (N.D. Miss. July 21, 2006) (citing *Fields v. Household Bank*, 280 F. Supp. 2d 530, 532 (N.D. Miss. 2003)). Thus, even if the amount in controversy for federal subject-matter jurisdiction was not facially apparent from Plaintiff's Complaint, his refusal to release Defendants of all claims in excess of \$75,000, exclusive of interest and costs, conclusively establishes that amount.

8. Based on the above, the amount in controversy of Plaintiff's claims exceeds \$75,000, exclusive of interest and costs. Therefore, this Court has original jurisdiction in accordance with 28 U.S.C. § 1332, and the action may be removed under 28 U.S.C. § 1441.

V. Venue

9. Venue properly rests with this Court pursuant to 28 U.S.C. § 1441(a), as this case is being removed from the Circuit Court of Bolivar County, Mississippi, Second Judicial District.

VI. Notice to State Court

10. Defendants will promptly file a true and correct copy of this Notice of Removal with the Circuit Court of Bolivar County, Mississippi, Second Judicial District, and effect removal to this Court. In accordance with 28 U.S.C. § 1446(d), no further proceedings shall be had in the state court unless and until the matter is remanded.

VII. Notice to Plaintiff

11. Consistent with 28 U.S.C. § 1446(d) and as stated in the attached Certificate of Service, a copy of this Notice of Removal is being provided to Plaintiff's counsel.

VIII. Conclusion

12. For the previous reasons, Defendants request that this Court receive and place on its docket this Notice of Removal and that the Circuit Court of Bolivar County, Mississippi, Second Judicial District, not proceed any further in this action unless and until it is remanded.

Dated: July 15, 2022.

Respectfully submitted,

**Young Enterprises 1, LLC and Rickey Lane
Young, Defendants**

By: /s/ James R. Moore, Jr.
James R. Moore, Jr. (MSB #3445)
Kyle R. Ketchings (MSB #105212)
Attorneys for Defendants

OF COUNSEL:

COPELAND, COOK, TAYLOR & BUSH, P.A.

1076 Highland Colony Parkway
600 Concourse, Suite 200
Ridgeland, Mississippi 39157
Post Office Box 6020
Ridgeland, Mississippi 39158
Telephone: 601-856-7200
Fax: 601-856-7626
jmoore@cctb.com
kketchings@cctb.com

CERTIFICATE OF SERVICE

I, James R. Moore, Jr./Kyle R. Ketchings, certify that I served a true and correct copy of the previous document, via electronic mail, to the following:

John A. Waits, Esq.
Bradley S. Kelly, Esq.
Morgan & Morgan, PLLC
4450 Old Canton Road, Suite 200
Jackson, Mississippi 39211
Jwaits@forthepeople.com
Bkelly@forthepeople.com
Attorneys for Plaintiff

Dated: July 15, 2022.

/s/ James R. Moore, Jr.

James R. Moore, Jr.
Kyle R. Ketchings